

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GUY ANTHONY DUPLANTIER  
6389 Gundry Avenue  
Long Beach, CA 90805

Operator's License No. OPR 10471

Respondent.

Case No. 2014-48

OAH No. 2015010638

**DECISION**

The Proposed Decision of Matthew Goldsby, Administrative Law Judge, dated August 25, 2015, in Los Angeles, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 2, paragraph number 3, "Super. Ct Los Angeles County, 2013" is stricken and replaced with "Super. Ct Los Angeles County, 2012".
2. On page 2, paragraph number 5, "2013, No. NA093503" is stricken and replaced with "1995, No. 95V01862".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

This Decision shall become effective on November 18, 2015.

IT IS SO ORDERED October 19, 2015

  
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FOR THE STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against:

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License No. OPR 10471

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**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on August 19, 2015, in Los Angeles, California.

Leslie A. Walden, Deputy Attorney General, appeared and represented complainant Susan Saylor, Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer Affairs (the Board).

Respondent Guy Anthony Duplantier III appeared and represented himself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

1. On August 23, 2001, the Board issued Operator's License number OPR 10471 to respondent. Respondent's license is valid and will expire on June 30, 2016, unless renewed.

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<sup>1</sup> The subject license was issued to respondent under the name "Guy Anthony Du Plantier III." (Ex. 2.) Respondent completed his Notice of Defense using the name "Guy Anthony Duplantier III." When asked to state and spell his name in open court, respondent added the suffix "the third" after his last name. However, all pleadings in this case have omitted the suffix. For consistency, the suffix is omitted in the caption of this Proposed Decision, but the order is intended to apply to the licensee Guy Anthony Duplantier III.

2. Complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense.

3. On June 10, 2013, respondent entered a plea of nolo contendere and was convicted of grand theft of personal property in violation of Penal Code section 487, subdivision (a), a felony. (*People v. Duplantier* (Super. Ct. Los Angeles County, 2013, No. NA093503.) The court sentenced respondent to 16 months in jail and denied probation. He was released after eight months of actual custody.

4. The conviction arose from the following facts and circumstances. Respondent was in a long-term relationship with a woman. In 2011, while the woman was on military deployment overseas, respondent had access to the woman's home. They communicated by email about a plumbing problem and the woman authorized respondent to fix a leak. At the time, respondent was having financial problems as the result of a failed lunch truck business venture. Without informing his girlfriend or asking her permission, respondent took 23 pieces of jewelry from the woman's home and used the jewelry as collateral for a pawnshop loan in the principal amount of \$5,000. The value of the jewelry was in the range of \$8,000 to \$14,000.

5. Previously, on May 22, 1995, respondent entered a plea of nolo contendere and was convicted of driving with 0.08 percent or more, in weight, of alcohol in his blood, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. (*People v. Duplantier* (Super. Ct. Los Angeles County, 2013, No. NA093503.) The court suspended the imposition of sentence and placed respondent on 48 months of probation under the following terms and conditions: that he pay fines and fees in the total amount of \$1,215, complete a three-month first-offender alcohol education and counseling program, operate no vehicle with any measurable amount of alcohol in his blood system, and obey all laws. Respondent satisfied the terms of his probation.

6. Respondent has no record of prior discipline. There is no evidence of any criminal record, except as described above.

7. Respondent is married. He has two daughters who are five and eight years old, respectively. Respondent expressed remorse and acknowledged that his actions were wrong. Respondent testified that he has come "closer to God" since the conviction and that he tries to help the homeless whenever he can by giving them food or money. With respect to his conviction, respondent testified that he had expected to be able to repay the loan and return the jewelry to the woman's house before she was scheduled to complete her military assignment. However, the woman was discharged early and returned home while her jewelry was still at the pawnshop.

8. The functions and duties of a structural pest control licensee include servicing residential properties. There is no evidence that respondent misappropriated personal property from any residential property while performing his duties as a licensee.

9. Complainant incurred prosecution costs in the amount of \$4,332.50. Complainant offered no evidence of any investigation costs. The prosecution costs were supported by a declaration and are reasonable.

## LEGAL CONCLUSIONS

1. The Board may revoke a license if the licensee is convicted of a crime that is substantially related to the qualifications, functions, or duties of a structural pest control operator. The certified record of conviction is conclusive evidence of the conviction. (Bus. & Prof. Code, § 8649.)

2. A crime is considered to be substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of the licensee to perform the functions authorized by the license or company registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1937.1, subd. (a).)

3. Theft or fiscal misconduct in connection with the practice of structural pest control is considered to be substantially related to the qualifications, functions, and duties of a licensee. (Cal. Code Regs., tit. 16, § 1937.1, subd. (b).)

4. In this case, respondent misappropriated his girlfriend's jewelry while accessing her house to repair a leak in her plumbing. Although the theft or fiscal misconduct did not occur in connection with his practice of structural pest control, the conviction is evidence of a present or potential unfitness to perform the duties of a pest control licensee. Grand theft by its nature involves dishonesty, a trait inconsistent with a licensee's functions and duties, which include servicing residential properties.

5. Cause exists to revoke respondent's license under Business and Professions Code section 8649 because he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. (Factual Findings 1-4 and 8.)

6. Respondent failed to present sufficient evidence of mitigation and rehabilitation under California Code of Regulations, title 16, section 1937.2. To his credit, respondent has no criminal record, except for one misdemeanor conviction based on an alcohol-related traffic violation that occurred 20 years ago. He has no record of discipline and there is no evidence that he misappropriated personal property from any residential property while performing his duties as a licensee.

7. Although respondent expressed remorse and acknowledged that his conduct was wrong, mere remorse does not demonstrate rehabilitation; stronger evidence of rehabilitation can only be demonstrated by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987.) Twenty-six months have passed since the conviction and respondent was incarcerated for eight of those months. More time is necessary before respondent may be able to present convincing evidence of rehabilitation.

Occasionally giving money or food to the homeless is insufficient to show that a recurrence of misconduct is unlikely. Accordingly, revocation of respondent's license is necessary for the protection of the public

8. Any licensee who has violated the licensing act may be ordered to pay the Board's reasonable costs incurred to investigate and prosecute the action. (Bus. & Prof. Code, §125.3.)

9. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing agency must consider in assessing costs. It must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The agency must also consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge to the discipline or is unable to pay.

10. Prosecution costs in the total amount of \$4,332 were supported by a declaration and are reasonable. (Factual Finding 9.) However, respondent used the hearing process to raise a colorable claim in defense and his ability to pay will be impaired by the revocation of his license. Ordering respondent to pay costs in addition to revoking his license will be unduly punitive. Accordingly, complainant's prosecution costs are allowed in the amount of \$4,332, but payment is deferred until such time as respondent successfully petitions the Board for reinstatement of his license.

#### ORDER

1. Operator License number OPR 10471 issued to Guy Anthony Duplantier III is revoked.

2. Prosecution costs are allowed in the amount of \$4,332, but payable to the Board only as a condition precedent to reinstatement of respondent's license.

DATED: August 25, 2015

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*Matthew Goldsby*  
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MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings